

JUL 11 2019

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

US DISTRICT COURT
WESTERN DISTRICT OF NC

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
FACEBOOK USER IDs

1. "100025015749591" (**TARGET ACCOUNT 1**)
2. "100013415917321" (**TARGET ACCOUNT 2**)

THAT IS STORED AT PREMISES
CONTROLLED BY FACEBOOK INC.

Case No. 3:19- *mj 230*

AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT

I, Peter Carbonaro, Task Force Officer with the Bureau of Alcohol, Tobacco, Firearms and Explosives, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this Affidavit in support of an Application for a Search Warrant for information associated with certain Facebook user IDs that are stored at premises owned, maintained, controlled, or operated by Facebook Inc. ("Facebook"), a social networking company headquartered in Menlo Park, California. The information to be searched is described in the following paragraphs and in Attachment A. This Affidavit is made in support of an Application for a Search Warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Facebook to disclose to the government records and other information in its possession, pertaining to the subscriber or customer associated with the user IDs: **TARGET ACCOUNT 1**: "100025015749591" and **TARGET ACCOUNT 2**: "100013415917321".

2. I have been a Detective with the Charlotte-Mecklenburg Police Department (“CMPD”) since August of 2007. Since June of 2018, I have been assigned as a Task Force Officer (“TFO”) to the Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”), Charlotte Field Division. I am a graduate of the CMPD training academy. I have attended numerous training classes in law enforcement and investigation, including: Basic Law Enforcement Training, Street Drug Enforcement, Use of Informants, Interviews and Interrogations, Surveillance and Intelligence Gathering, Basic Drug Investigation, Undercover Techniques and Survival, Roadside Criminal Interdiction, Physical Surveillance, Basic Criminal Investigations, Bulletproof Mind and Violent Criminal Apprehension Techniques. As a CMPD Detective, I have participated in numerous investigations involving the illicit use and possession of firearms, in violation of both state and federal firearms laws, including 18 U.S.C. § 922(g). I have been the affiant on numerous search and seizure warrants, and have experience in the execution of search warrants.

3. The facts in this Affidavit come from my personal observations, my training and experience, and information obtained from other CMPD Detectives, law enforcement personnel and witnesses. This Affidavit is intended to show merely that there is sufficient probable cause for the requested Warrant and does not set forth all of my knowledge about this matter.

4. Based on the facts set forth in this Affidavit, there is probable cause to believe that a violation of 18 U.S.C. § 922(g) has been committed by **DONTA MONTRICE OLIVER**. There is also probable cause to believe that the information described in Attachment B will constitute additional evidence of this criminal violation, specifically, additional evidence that further confirms the identity of **DONTA MONTRICE OLIVER** as the individual who committed this offense.

PROBABLE CAUSE

I. BACKGROUND

5. The Bureau of Alcohol, Tobacco, Firearms and Explosives and the Charlotte-Mecklenburg Police Department are investigating an alleged violation of 18 U.S.C. § 922(g)(1) by **DONTA MONTRICE OLIVER**, an individual who, knowing that he had been convicted of one or more offenses punishable by a term of imprisonment in excess of one year, knowingly and unlawfully possessed a firearm and ammunition within the City of Charlotte, in the Western Judicial District of North Carolina, on or about November 1, 2018. Based on the facts set forth in this Affidavit, there is probable cause to believe that a violation of 18 U.S.C. § 922 (g)(1) has been committed.

6. CMPD began its investigation of a shooting in the general vicinity of 4601 N. Tryon St. during the early hours of November 1, 2018, after responding to a call for service at the Carolinas Medical Center-University Hospital reporting an assault with a deadly weapon and injury. Officers learned from witnesses that one individual had been shot in the leg while seated in his parked vehicle at or near the Kentucky Fried Chicken on N. Tryon St.

7. Officers interviewed witnesses and reviewed security footage from several businesses in the vicinity, and determined the incident was tied to an altercation at the Tropix Nightclub at 4701 N. Tryon St. Surveillance footage from surrounding businesses showed a male subject exiting a vehicle, fleeing on foot, and firing a handgun towards N. Tryon St. before entering a white four-door vehicle. A witness, who observed the subject running through a parking lot holding a firearm and entering a vehicle, described the subject as a black male, slim, wearing dark pants and a dark shirt. The witness described the vehicle as a white or cream-colored four-door hatchback with a smashed windshield. Security footage from a nearby

business showed a black male, wearing a black shirt with a large white logo, dark pants, and light gray shoes, running through a parking lot holding a handgun.

8. Using the License Plate Reader System, officers identified a white model year 2000 Dodge Caliber, license plate PKZ7821 (the “Dodge Caliber”), in the vicinity of the shooting earlier in the evening. Officers learned that the vehicle was registered to a Latoya Stone, residing at 1012 Beaugard Drive, in Charlotte, North Carolina. A search in the police database revealed a **DONTA MONTRICE OLIVER** listed under the same address. Officers reviewed **OLIVER**’s DMV and previous arrest photographs and determined that the male subject observed on the security footage was **OLIVER**. At the time of the incident, **OLIVER** was on probation following conviction for violation of the state crime of possession of firearm by felon.

9. The next day, November 2, 2018, officers located the Dodge Caliber parked in the driveway at 1012 Beaugard Drive, and observed damage consistent with the witness’ statements.

10. On November 7, 2018, Warrants were issued by a Mecklenburg County Magistrate Judge on **OLIVER** for multiple charges, including: two counts of Discharging Firearm into Occupied Property, Assault with Deadly Weapon Inflicting Serious Injury, Possession of Firearm by Felon, and Discharge Firearm in City Limits. On the morning of November 12, 2018, CMPD’s Violent Criminal Apprehension Team apprehended **OLIVER** at 1012 Beaugard Drive and took him into custody.

11. CMPD officers conducted a consent search of the premises at 1012 Beaugard Dr., on the morning of November 12, 2018, however, did not locate a firearm. At approximately 6:00 that evening, however, CMPD officers received a call from the other resident of 1012 Beaugard Dr., who advised that she had received a phone call from **OLIVER** from the Mecklenburg

County Jail, and that she had subsequently located a firearm inside the residence. Law enforcement was invited to the residence to take possession of the firearm. Officers returned to 1012 Beaugard Drive on November 12, 2018 and collected a CZ (Ceska Zbrojovka) model 75 B 9 mm caliber pistol.

12. An ATF Special Agent later examined the CZ 75 B 9 mm caliber pistol recovered from **OLIVER**'s residence and determined that it was not manufactured in the State of North Carolina and had traveled in or affected interstate and/or foreign commerce.

13. On November 13, 2019. CMPD officers obtained a Search Warrant to collect DNA from **OLIVER**, while in custody. The CZ 75 B 9 mm caliber pistol recovered from **OLIVER**'s residence was submitted to the CMPD crime lab to be tested for the presence of DNA, and, if possible, compared with **OLIVER**'s DNA. The crime lab determined there was a match between **OLIVER**'s DNA and DNA profiles located on both the safety lever and slide of the firearm recovered from **OLIVER**'s residence.

14. CMPD officers additionally collected five 9mm Luger casings from the immediate area where **OLIVER** was observed shooting, and the casings were submitted to the CMPD crime lab for analysis. The crime lab determined that the casings were fired from the CZ 75 B 9 mm caliber pistol recovered from **OLIVER**'s residence.

15. CMPD officers also collected two spent projectiles from the victim's vehicle, and the projectiles were submitted to the CMPD crime lab for analysis. The crime lab determined that the projectiles were fired from the CZ 75 B 9 mm caliber pistol recovered from **OLIVER**'s residence.

16. During the investigation, officers obtained copies of what appeared to be screen shots of photographs posted by **OLIVER** to his Facebook page(s) on the evening of October 31,

2018, preceding the shooting. These photographs depicted **OLIVER**'s clothing for the evening, which included a dark shirt with white logo, dark pants and gray sneakers.

17. CMPD officers interviewed **OLIVER** on November 12, 2018 while he was in custody. **OLIVER** denied involvement in the incident.

III. THE TARGET ACCOUNTS

18. **TARGET ACCOUNT 1** and **TARGET ACCOUNT 2** are believed to be the accounts of **DONTA MONTRICE OLIVER**, who utilizes a Facebook account under the name "Donta Montrice Robinson," with associated user IDs: "100025015749591" (**TARGET ACCOUNT 1**) and "100013415917321" (**TARGET ACCOUNT 2**). Both accounts are believed by investigators to have been used by **OLIVER**, and are believed to contain postings made on or around October 31, 2018, including photographs of clothing or other information, that may be used to confirm the identity of **OLIVER** as the individual who is alleged to have violated a federal firearms offenses, specifically, 18 U.S.C. § 922(g)(1). A Preservation Request was sent to Facebook in order to preserve **TARGET ACCOUNT 1** and **TARGET ACCOUNT 2** on March 26, 2019.

IV. FACEBOOK

19. Facebook owns and operates a free-access social networking website of the same name that can be accessed at <http://www.facebook.com>. Facebook allows its users to establish accounts with Facebook, and users can then use their accounts to share written news, photographs, videos, and other information with other Facebook users, and sometimes with the general public.

20. Facebook asks users to provide basic contact and personal identifying information to Facebook, either during the registration process or thereafter. This information may include

the user's full name, birth date, gender, contact e-mail addresses, Facebook passwords, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers. Facebook also assigns a user identification number to each account

21. Facebook users may join one or more groups or networks to connect and interact with other users who are members of the same group or network. Facebook assigns a group identification number to each group. A Facebook user can also connect directly with individual Facebook users by sending each user a "Friend Request." If the recipient of a "Friend Request" accepts the request, then the two users will become "Friends" for purposes of Facebook and can exchange communications or view information about each other. Each Facebook user's account includes a list of that user's "Friends" and a "News Feed," which highlights information about the user's "Friends," such as profile changes, upcoming events, and birthdays.

22. Facebook users can select different levels of privacy for the communications and information associated with their Facebook accounts. By adjusting these privacy settings, a Facebook user can make information available only to himself or herself, to particular Facebook users, or to anyone with access to the Internet, including people who are not Facebook users. A Facebook user can also create "lists" of Facebook friends to facilitate the application of these privacy settings. Facebook accounts also include other account settings that users can adjust to control, for example, the types of notifications they receive from Facebook.

23. Facebook users can create profiles that include photographs, lists of personal interests, and other information. Facebook users can also post "status" updates about their whereabouts and actions, as well as links to videos, photographs, articles, and other items available elsewhere on the Internet. Facebook users can also post information about upcoming "events," such as social occasions, by listing the event's time, location, host, and guest list. In

addition, Facebook users can “check in” to particular locations or add their geographic locations to their Facebook posts, thereby revealing their geographic locations at particular dates and times. A particular user’s profile page also includes a “Wall,” which is a space where the user and his or her “Friends” can post messages, attachments, and links that will typically be visible to anyone who can view the user’s profile.

24. Facebook allows users to upload photos and videos, which may include any metadata such as location that the user transmitted when s/he uploaded the photo or video. It also provides users the ability to “tag” (i.e., label) other Facebook users in a photo or video. When a user is tagged in a photo or video, he or she receives a notification of the tag and a link to see the photo or video. For Facebook’s purposes, the photos and videos associated with a user’s account will include all photos and videos uploaded by that user that have not been deleted, as well as all photos and videos uploaded by any user that have that user tagged in them.

25. Facebook users can exchange private messages on Facebook with other users. Those messages are stored by Facebook unless deleted by the user. Facebook users can also post comments on the Facebook profiles of other users or on their own profiles; such comments are typically associated with a specific posting or item on the profile. In addition, Facebook has a chat feature that allows users to send and receive instant messages through Facebook Messenger. These chat communications are stored in the chat history for the account. Facebook also has Video and Voice Calling features, and although Facebook does not record the calls themselves, it does keep records of the date of each call.

26. If a Facebook user does not want to interact with another user on Facebook, the first user can “block” the second user from seeing his or her account.

27. Facebook has a “like” feature that allows users to give positive feedback or connect to particular pages. Facebook users can “like” Facebook posts or updates, as well as webpages or content on third-party (*i.e.*, non-Facebook) websites. Facebook users can also become “fans” of particular Facebook pages.

28. Facebook has a search function that enables its users to search Facebook for keywords, usernames, or pages, among other things.

29. Each Facebook account has an activity log, which is a list of the user’s posts and other Facebook activities from the inception of the account to the present. The activity log includes stories and photos that the user has been tagged in, as well as connections made through the account, such as “liking” a Facebook page or adding someone as a friend. The activity log is visible to the user but cannot be viewed by people who visit the user’s Facebook page.

30. Facebook also has a Marketplace feature, which allows users to post free classified ads. Users can post items for sale, housing, jobs, and other items on the Marketplace.

31. In addition to the applications described above, Facebook also provides its users with access to thousands of other applications (“apps”) on the Facebook platform. When a Facebook user accesses or uses one of these applications, an update about that the user’s access or use of that application may appear on the user’s profile page.

32. Facebook also retains Internet Protocol (“IP”) logs for a given user ID or IP address. These logs may contain information about the actions taken by the user ID or IP address on Facebook, including information about the type of action, the date and time of the action, and the user ID and IP address associated with the action. For example, if a user views a Facebook profile, that user’s IP log would reflect the fact that the user viewed the profile, and would show when and from what IP address the user did so.

33. Social networking providers like Facebook typically retain additional information about their users' accounts, such as information about the length of service (including start date), the types of service utilized, and the means and source of any payments associated with the service (including any credit card or bank account number). In some cases, Facebook users may communicate directly with Facebook about issues relating to their accounts, such as technical problems, billing inquiries, or complaints from other users. Social networking providers like Facebook typically retain records about such communications, including records of contacts between the user and the provider's support services, as well as records of any actions taken by the provider or user as a result of the communications.

34. As explained herein, information stored in connection with a Facebook account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, a Facebook user's IP log, stored electronic communications, and other data retained by Facebook, can indicate who has used or controlled the Facebook account. This "user attribution" evidence is analogous to the search for "indicia of occupancy" while executing a search warrant at a residence. For example, profile contact information, private messaging logs, status updates, and tagged photos (and the data associated with the foregoing, such as date and time) may be evidence of who used or controlled the Facebook account at a relevant time. Further, Facebook account activity can show how and when the account was accessed or used. For example, as described herein, Facebook logs the Internet Protocol (IP) addresses from which users access their accounts along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic

context of the account access and use relating to the crime under investigation. Such information allows investigators to understand the geographic and chronological context of Facebook access, use, and events relating to the crime under investigation. Additionally, Facebook builds geo-location into some of its services. Geo-location allows, for example, users to “tag” their location in posts and Facebook “friends” to locate each other. This geographic and timeline information may tend to either inculpate or exculpate the Facebook account owner. Last, Facebook account activity may provide relevant insight into the Facebook account owner’s state of mind as it relates to the offense under investigation. For example, information on the Facebook account may indicate the owner’s motive and intent to commit a crime (e.g., information indicating a plan to commit a crime), or consciousness of guilt (e.g., deleting account information in an effort to conceal evidence from law enforcement).

35. Therefore, the computers of Facebook are likely to contain all the material described above, including stored electronic communications and information concerning subscribers and their use of Facebook, such as account access information, transaction information, and other account information.

INFORMATION TO BE SEARCHED AND THINGS TO BE SEIZED

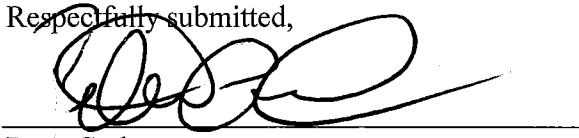
36. I anticipate executing this Warrant under the Electronic Communications Privacy Act, in particular 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A), by using the Warrant to require Facebook to disclose to the government copies of the records and other information (including the content of communications) particularly described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

CONCLUSION

37. Based on the forgoing, I request that the Court issue the proposed Search Warrant. This Court has jurisdiction to issue the requested Warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i). Because the warrant will be served on Facebook, who will then compile the requested records at a time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

38. Pursuant to 18 U.S.C. § 2703(g), the presence of a law enforcement officer is not required for the service or execution of this Warrant.

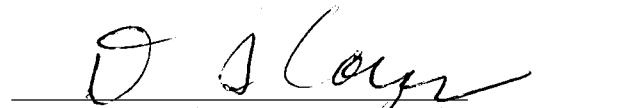
Respectfully submitted,



Peter Carbonaro
Task Force Officer, ATF

This Affidavit was reviewed by AUSA Katherine T. Armstrong.

Subscribed and sworn to before me on this 11th day of July 2019



THE HONORABLE DAVID S. CAYER
UNITED STATES MAGISTRATE JUDGE
WESTERN DISTRICT OF NORTH CAROLINA

ATTACHMENT A

Property to Be Searched

This Warrant applies to information associated with the Facebook user IDs

1. Facebook User Number "100025015749591" (**TARGET ACCOUNT 1**)
2. Facebook User Number "100013415917321" (**TARGET ACCOUNT 2**)

that is stored at premises owned, maintained, controlled, or operated by Facebook Inc., a company headquartered in Menlo Park, California.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Facebook

To the extent that the information described in Attachment A is within the possession, custody, or control of Facebook Inc. (“Facebook”), regardless of whether such information is located within or outside of the United States, including any messages, records, files, logs, or information that have been deleted but are still available to Facebook, or have been preserved pursuant to a request made under 18 U.S.C. § 2703(f), Facebook is required to disclose the following information to the government for each user IDs listed in Attachment A:

- (a) All contact and personal identifying information, including full name, user identification number, birth date, gender, contact e-mail addresses, physical address (including city, state, and zip code), telephone numbers, screen names, websites, and other personal identifiers.
- (b) All activity logs for the account and all other documents showing the user's posts and other Facebook activities from October 31, 2018 to November 12, 2018;
- (c) All photos and videos uploaded by that user IDs and all photos and videos uploaded by any user that have that user tagged in them from October 31, 2018 to November 12, 2018, including Exchangeable Image File (“EXIF”) data and any other metadata associated with those photos and videos;
- (d) All profile information; News Feed information; status updates; videos, photographs, articles, and other items; Notes; Wall postings; friend lists, including the friends' Facebook user identification numbers; groups and networks of which the user is a member, including the groups' Facebook group identification

numbers; future and past event postings; rejected “Friend” requests; comments; gifts; pokes; tags; and information about the user’s access and use of Facebook applications;

- (e) All records or other information regarding the devices and internet browsers associated with, or used in connection with, that user IDs, including the hardware model, operating system version, unique device identifiers, mobile network information, and user agent string;
- (f) All other records and contents of communications and messages made or received by the users from October 31, 2018 to November 12, 2018, including all Messenger activity, private messages, chat history, video and voice calling history, and pending “Friend” requests;
- (g) All “check ins” and other location information;
- (h) All IP logs, including all records of the IP addresses that logged into the account;
- (i) All records of the account’s usage of the “Like” feature, including all Facebook posts and all non-Facebook webpages and content that the user has “liked”;
- (j) All information about the Facebook pages that the account is or was a “fan” of;
- (k) All past and present lists of friends created by the account;
- (l) All records of Facebook searches performed by the from October 31, 2018 to November 12, 2018; All information about the user’s access and use of Facebook Marketplace;
- (m) The types of service utilized by the user;

- (n) The length of service (including start date) and the means and source of any payments associated with the service (including any credit card or bank account number);
- (o) All privacy settings and other account settings, including privacy settings for individual Facebook posts and activities, and all records showing which Facebook users have been blocked by the account;
- (p) All records pertaining to communications between Facebook and any person regarding the user or the user's Facebook account, including contacts with support services and records of actions taken.

Facebook is hereby ordered to disclose the above information to the government within

14 DAYS of service of this Warrant.

II. Information to be seized by the government

All information described above in Section I that constitutes fruits, evidence and instrumentalities of violations of 18 U.S.C. § 922(g)(1) involving **DONTA MONTRICE OLIVER**, and other persons known and unknown through this investigation since October 31, 2018, including, for each user ID identified on Attachment A, information pertaining to the following matters:

- (a) Photographs or postings regarding the clothing worn by, appearance and/or location of **OLIVER** the night preceding and/or of the incident; communications regarding the acts of violence committed by **OLIVER** and the incident that occurred on or about November 1, 2018 and/or his unlawful possession of a firearm(s); communications regarding the firearm(s) possessed by **OLIVER**; communications regarding the account user's location on or around the date of the incident, October 31, 2018 through November 1, 2018; Records relating to who created, used, or communicated with the user ID, including records about their identities and whereabouts; Evidence indicating how and when the Facebook account was accessed or used, to determine the chronological and geographic context of account access, use, and events relating to the crime under investigation and to the Facebook account owner;
- (b) Evidence indicating the Facebook account owner's state of mind as it relates to the crime under investigation;
- (c) The identity of the person(s) who created or used the user ID, including records that help reveal the whereabouts of such person(s).